

MARC M. SELTZER (54534)
mseltzer@susmangodfrey.com
STEVEN G. SKLAVER (237612)
ssklaver@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067-6029
Telephone: (310) 789-3100
Facsimile: (310) 789-3150

ANDREW J. ENTWISTLE (*Pro Hac Vice*)
aentwistle@entwistle-law.com
VINCENT R. CAPPUCCI (*Pro Hac Vice*)
vcappucci@entwistle-law.com
ARTHUR V. NEALON (*Pro Hac Vice*)
anealon@entwistle-law.com
ROBERT N. CAPPUCCI (*Pro Hac Vice*)
rcappucci@entwistle-law.com
ENTWISTLE & CAPPUCCI LLP
299 Park Avenue, 20th Floor
New York, NY 10171
Telephone: (212) 894-7200
Facsimile: (212) 894-7272

[Additional Counsel for Plaintiff on Signature Page]

Attorneys for Plaintiff Timber Hill LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

TIMBER HILL LLC, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

PERSHING SQUARE CAPITAL
MANAGEMENT, L.P., et al.,

Defendants.

Case No. 2:17-cv-04776 DOC (KESx)

The Hon. David O. Carter

CLASS ACTION

MEMORANDUM IN SUPPORT OF
PLAINTIFF TIMBER HILL LLC'S
MOTION FOR APPOINTMENT AS
LEAD PLAINTIFF, APPROVAL OF
SELECTION OF LEAD COUNSEL
AND CONSOLIDATION OF
FUTURE RELATED ACTIONS ON
BEHALF OF DERIVATIVES
INVESTORS

DATE: October 2, 2017

TIME: 8:30 a.m.

PLACE: Courtroom 9D

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Plaintiff Timber Hill LLC (“Timber Hill”) respectfully submits this memorandum of points and authorities in support of its motion pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78u-4(b)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995 (“PSLRA”), for the entry of an Order: (1) appointing Timber Hill as lead plaintiff for a class (the “Derivatives Class”) consisting of: sellers of Allergan, Inc. (“Allergan”) call options, purchasers of Allergan put options and sellers of Allergan equity forward contracts from February 25, 2014 through April 21, 2014, inclusive (the “Class Period”); (2) approving Timber Hill’s selection of Entwistle & Cappucci LLP (“Entwistle & Cappucci”) and Susman Godfrey L.L.P. (“Susman Godfrey”) to serve as Co-Lead Counsel for lead plaintiff and the Derivatives Class; and (3) consolidating any subsequently filed, removed or transferred related actions on behalf of derivatives investors under the caption *In re Allergan, Inc. Proxy Violation Derivatives Litigation*.

I. PRELIMINARY STATEMENT

Timber Hill brings this action against Pershing Square Capital Management, L.P. (“Pershing”), Valeant Pharmaceuticals International, Inc. (“Valeant”) and related defendants¹ who violated the federal securities laws by enabling and encouraging defendant Pershing to acquire billions of dollars of Allergan securities while possessing the non-public knowledge the transaction likely would proceed as a hostile tender offer. Pershing’s acquisition of Allergan securities violated, *inter alia*, Section 14(e) of the Exchange Act, as amended by the Williams Act of 1968, codified at 15 U.S.C. § 78n(e), Rule 14e-3 promulgated thereunder, codified at 17 C.F.R. § 240.14e-3, Section 20A of the Exchange Act, codified at 15 U.S.C. § 78t-1, and Section 20(a) of the Exchange Act, codified at 15 U.S.C. § 78(t)(a).

¹ PS Management GP, LLC, William Ackman (“Ackman”), (founder and CEO of Pershing), Pershing Square, L.P., Pershing Square II, L.P., Pershing Square GP, LLC, Pershing Square International, Pershing Square Holdings, Ltd., (together, with Pershing, “Pershing Defendants”) and Michael Pearson (“Pearson”) (former CEO of Valeant).

1 This action is related to *In re Allergan, Inc. Proxy Violation Securities*
2 *Litigation*, Case No. 8:14-cv-2004-DOC (KESx) (C.D. Cal. Dec. 16, 2014) (the
3 “Common Stock Class Action” or “*Basile*”). In *Basile*, the Court recently certified
4 a class consisting of all persons who sold Allergan common stock
5 contemporaneously with defendants’ purchases of Allergan common stock. Lead
6 plaintiffs in *Basile* do not purport to represent persons or entities that traded
7 Allergan derivative and securities, indeed, such derivative securities traders are
8 excluded from the recently certified class.

9 Accordingly, on June 28, 2017, plaintiff Timber Hill filed the instant action
10 in order to protect the interests of the Derivatives Class encompassing all persons or
11 entities that sold Allergan call options, purchased Allergan put options, or sold
12 Allergan equity forward contracts during the Class Period. These Class members
13 incurred significant harm when they sold call options, purchased put options or sold
14 equity forward contracts during the time period that defendants are alleged to have
15 been secretly building their ownership positions in furtherance of defendants’
16 takeover scheme.

17 Pursuant to the PSLRA, this Court must appoint the “most adequate plaintiff”
18 to serve as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(i). In that regard, the Court is
19 required to determine which movant has the “largest financial interest” in the relief
20 sought by the Class in this litigation and also whether such movant has made a
21 *prima facie* showing that it is a typical and adequate class representative under Fed.
22 R. Civ. P. Rule 23. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

23 Timber Hill satisfies all of the statutory requirements for appointment as lead
24 plaintiff of the Derivatives Class. Specifically, Timber Hill: (1) has timely filed
25 this motion for appointment as lead plaintiff; (2) believes it has the largest financial
26 interest in this litigation; and (3) will adequately represent the interests of the
27 Derivatives Class since it satisfies the typicality and adequacy requirements of Fed.
28 R. Civ. P. 23(a). *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii). In addition, Timber Hill’s

1 claims are typical, if not identical, to the other Derivatives Class members. Timber
2 Hill can adequately represent the interests of the Derivatives Class since it has no
3 conflicts with other class members, and has chosen highly qualified Lead Counsel
4 who have been and can continue to vigorously pursue this litigation on behalf of the
5 Derivatives Class.

6 As a large institutional investor, Timber Hill is an ideal lead plaintiff to
7 represent the Derivatives Class. Moreover, Timber Hill is familiar with the role of
8 and responsibility of a class representative plaintiff because among other things, it
9 has previously participated in other complex securities litigation matters, and has
10 served in a leadership role. In the present action, Timber Hill has committed the
11 resources necessary to vigorously pursue claims on behalf of the Derivatives Class,
12 and has been actively involved in this action since its inception. Among other
13 things, Timber Hill, or its selected counsel has: (i) filed the only complaint on
14 behalf of the Derivatives Class; (ii) met and conferred with counsel for defendants
15 in the present case as well as counsel for the plaintiffs and defendants in *Basile*; (iii)
16 filed a status report with the Court; (iv) attended the July 25, 2017 hearing before
17 the Court; (v) met with the Special Masters in this action and the *Basile* action; (vi)
18 negotiated a scheduling order; (vii) negotiated a protective order; (viii) moved for
19 relief from the PSLRA discovery stay; (ix) further negotiated discovery-related
20 issues with defendants separately, and in response to the Court's and Special
21 Masters' directions; and (x) commenced document discovery and review.
22 Accordingly, Timber Hill is the presumptive lead plaintiff.

23 Timber Hill's selection of Entwistle & Cappucci and Susman Godfrey as Co-
24 Lead Counsel should likewise be approved by the Court because, pursuant to the
25 PSLRA, the presumptive lead plaintiff is entitled to select the Lead Counsel of its
26 choice. Entwistle & Cappucci has extensive experience in the successful
27 prosecution of securities class actions, and will more than adequately represent the
28 interests of all Derivatives Class members. Timber Hill also seeks the appointment

1 of Co-Lead Counsel Susman Godfrey, a firm with a nationwide reputation for
2 excellence in the litigation of complex class action cases.

3 **II. BACKGROUND**

4 This action arises from events preceding Valeant's June 17, 2014
5 announcement of a tender offer for Allergan. As early as February 6, 2014 and
6 continuing for the next several weeks, Valeant took substantial steps toward a
7 tender offer by engaging in concerted efforts with defendant Ackman and Pershing.
8 Among other things, Valeant: (i) engaged legal advisors; (ii) engaged financial
9 advisors; (iii) prepared financial models with offer pricing scenarios, expected stock
10 price impact and projected synergies; (iv) held multiple Board of Directors
11 meetings; (v) negotiated the respective financial commitments of Valeant and
12 Pershing; and (vi) agreed to commit over \$75 million to the entity that would
13 ultimately acquire Allergan securities.

14 On February 9, 2014, Valeant and Pershing entered into a confidentiality
15 agreement, after which defendant Pearson informed Ackman of Valeant's interest
16 in a potential transaction with Allergan. With its inside knowledge of Valeant's
17 impending takeover, Pershing agreed to acquire a significant Allergan stake using
18 its own funds, in order to support Valeant's efforts and to secure massive profits for
19 itself. On February 13, 2014, representatives of Valeant and Pershing and their
20 respective counsel met to discuss a potential transaction involving Allergan. On
21 February 15, 2014, Andrew Davis, Vice President of Business Development at
22 Valeant, emailed Pearson attaching a document acknowledging that the "Allergan
23 Opportunity" would consist of a "[h]ostile cash and stock merger." *See* Timber
24 Hill's Class Action Complaint, ECF No. 1 at 89-104.

25 Between February 20 and 25, 2014, representatives of Valeant and Pershing
26 and their respective counsel exchanged drafts of and negotiated a contractual and
27 financial agreement ("the Relationship Agreement") related to the purchase of
28 equity securities issued by Allergan. The parties finalized and executed the

1 Relationship Agreement on February 25, 2014. Under the Relationship Agreement,
2 Valeant agreed to contribute \$75.9 million — the maximum allowed without
3 triggering antitrust disclosure requirements — to the purported “co-bidder entity”
4 PS Fund 1, LLC (“PS Fund 1”) to assist with the Pershing Defendants’ acquisition
5 of a significant stake of Allergan’s stock at prices that were artificially depressed or
6 failure to disclose Valeant’s takeover plans. Pershing supplied funds of over \$3
7 billion, and retained sole control over PS Fund 1. *Id.* at 108-114.

8 In the Relationship Agreement, defendants specifically claimed to be “co-
9 bidders” in connection with a potential Allergan transaction — likely in an effort to
10 support a claimed argument that they were all the same “person” for purposes of the
11 insider trading rules. *Id.* at 112. PS Fund 1 secretly purchased a substantial amount
12 of Allergan stock without filing disclosure documents with the Securities and
13 Exchange Commission or paying any form of control premium. *Id.* at 122.
14 Pershing was the primary actor in purchasing Allergan stock; it provided
15 approximately 97.5% of the funding for PS Fund 1, and the Relationship
16 Agreement states that Pershing “will direct the management” of PS Fund 1.

17 Rule 14e-3 provides that, where any person has taken “a substantial step or
18 steps” (the “offering person”) to commence a tender offer of a target company, any
19 “other person” who is in possession of material nonpublic information relating to
20 that tender offer is prohibited from purchasing or selling any securities of the target
21 company, unless the information is publicly disclosed within a reasonable time
22 *prior* to the purchase or sale.

23 Valeant took substantial steps toward a tender offer for Allergan’s stock
24 beginning on or before February 6, 2014. Moreover, having already been rebuffed,
25 Valeant knew it would not likely be able to acquire Allergan through a “friendly”
26 deal, and that a hostile tender offer was therefore inevitable. Valeant told Pershing
27 about Valeant’s confidential plans to launch a tender offer *precisely because*
28 Valeant expected and knew that Pershing would trade on that information. Valeant

1 wanted as many shares as possible to be held by stockholders that Valeant
2 perceived as likely to support an Allergan takeover, but since it could not pay for
3 the shares directly, it turned to Pershing. The illicit tip from Valeant was Pershing's
4 incentive to join the scheme.

5 In a series of complex and undisclosed transactions between February 25 and
6 April 21, 2014, PS Fund 1 quickly acquired 9.7% of Allergan's stock (the
7 "Purchase Program"), primarily through over-the-counter ("OTC") call options and
8 OTC equity futures. Defendants began the Purchase Program at a time when they
9 unquestionably had material nonpublic information relating to Valeant's
10 forthcoming tender offer; in violation of Rule 14e-3's trading prohibition. Pershing
11 knew that the announcement of Valeant's hostile offer for Allergan would trigger a
12 bidding war and corresponding massive increase in Allergan's stock price. By the
13 time "white knight" bidder Actavis, plc closed a deal to acquire Allergan on March
14 17, 2015, Pershing owned nearly 9.7% of Allergan's common stock – worth over
15 \$6 billion – which it rushed to cash out for a net profit of approximately **\$2.5**
16 **billion**. *Id.* at 187. In total, **over 97%** of this profit – or **\$2,536,145,765.95** – was
17 derived from PS Fund 1's purchases of derivatives. *Id.* at 188. Plaintiff and other
18 derivatives investors suffered harm as a result of these trades because they did not
19 know the information they were entitled to know under the disclose-or-abstain-
20 from-trading principle of Rule 14e-3, and consequently traded Allergan derivatives
21 without receiving the benefit of the premium that would have existed if the
22 Pershing Defendants had timely disclosed what they knew about the takeover
23 scheme. Pershing thus exploited exactly the sort of informational advantage that
24 Rule 14e-3 was designed to prevent, and reaped billions in illicit profits at the
25 expense of Timber Hill and other derivatives investors.

26 Defendants' illicit insider trading and securities warehousing scheme was
27 effectuated through trading in Allergan derivative securities for the specific purpose
28 of circumventing regulatory and disclosure requirements. Indeed, Pershing's

1 acquisition of Allergan derivatives was the “but for” cause that allowed defendants
 2 to carry out their insider trading scheme. Defendants are alleged to be liable to
 3 plaintiff and other derivative securities investors for damages by reason of
 4 defendants’ alleged misconduct.

5 **III. TIMBER HILL SHOULD BE APPOINTED LEAD PLAINTIFF**

6 **A. The PSLRA Standard For Appointment Of Lead Plaintiff**

7 The PSLRA sets forth the lead plaintiff selection procedures for “each
 8 private right of action arising under the [Exchange Act] that is brought as a plaintiff
 9 class action pursuant to the Federal Rules of Civil Procedure.” 15 U.S.C. §§ 78u-
 10 4(a)(1) and (a)(3)(B). Specifically, Section 21D(a)(3)(A)(i) of the Exchange Act,
 11 as amended by the PSLRA, provides that:

12 Not later than 20 days after the date on which the complaint is
 13 filed, the plaintiff or plaintiffs shall cause to be published, in a
 14 widely circulated national business-oriented publication or wire
 15 service, a notice advising members of the purported plaintiff
 16 class--

- 17 (I) of the pendency of the action, the claims asserted
- 18 therein, and the purported class period; and
- 19 (II) that, not later than 60 days after the date on which
- 20 the notice is published, any member of the
- 21 purported class may move the court to serve as lead
- 22 plaintiff of the purported class.

23 15 U.S.C. § 78u-4(a)(3)(A)(i).

24 Section 21D(a)(3)(B)(i) directs the Court to consider any motions by a
 25 purported class member to serve as lead plaintiff in response to any such notice by
 26 no later than 90 days after the date of publication of the aforementioned notice. *See*
 27 15 U.S.C. § 78u-4(a)(3)(B)(i). Under this section, the Court shall consider any
 28 motion made by a class member and shall appoint as lead plaintiff the member or

1 members that the Court determined to be “most capable of adequately representing
2 the interests of class members.” *Id.*

3 The PSLRA requires the Court to adopt a rebuttable presumption that the
4 “most adequate plaintiff” to serve as lead plaintiff is the “person or group of
5 persons” that:

6 (aa) has either filed the complaint or made a motion in response to [the
7 aforementioned] notice;

8 (bb) in the determination of the court, has the largest financial interest
9 in the relief sought by the class; and

10 (cc) otherwise satisfies the requirements of Rule 23 of the Federal
11 Rules of Civil Procedure

12 *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). The presumption may only be rebutted by
13 proof from a class member that the “most adequate plaintiff”: (i) “will not fairly
14 and adequately protect the interests of the class,” or (ii) “is subject to unique
15 defenses that render such plaintiff incapable of adequately representing the class.”

16 As discussed more fully below, neither of these factors applies to Timber Hill.

17 **B. Timber Hill Has Satisfied The PSLRA Requirements And Should**
18 **Be Appointed Lead Plaintiff**

19 Timber Hill should be appointed lead plaintiff of the Derivatives Class
20 because it satisfies all of the PSLRA’s requirements, is believed to have the largest
21 financial interest in this litigation and otherwise meets the requirements of Fed. R.
22 Civ. P. 23.

23 **1. This Motion Is Timely And Proper**

24 Timber Hill has demonstrated its readiness to serve as a representative of the
25 Derivatives Class by filing the only complaint in this case. Timber Hill has also
26 signed a certification setting forth its transactions in call options and put options
27 during the Class Period. *See* Seltzer Decl., Ex. A. In addition, Timber Hill has
28 been actively involved in this litigation. To date, Timber Hill has, among other
things: (i) filed the only complaint on behalf of the Derivatives Class; (ii) met and

1 conferred with counsel for defendants in the present case as well as counsel for the
2 plaintiffs and defendants in *Basile*; (iii) filed a status report with the Court; (iv)
3 attended the July 25, 2017 hearing before the Court; (v) met with the Special
4 Masters in this action and the *Basile* action; (vi) negotiated a scheduling order; (vii)
5 negotiated a protective order; (viii) moved for relief from the PSLRA discovery
6 stay; (ix) further negotiated discovery-related issues with defendants separately, and
7 in response to the Court's and Special Masters' directions; and (x) commenced
8 document discovery and review. In addition, Timber Hill has committed
9 substantial resources to pursue claims on behalf of the class.

10 Timber Hill's motion to serve as lead plaintiff is also timely. As noted
11 above, Timber Hill's complaint was filed in this Court on June 28, 2017. On June
12 30, 2017, Timber Hill, through its counsel, published a notice of pendency of this
13 action pursuant to Section 21D(a)(3)(A)(i) of the Exchange Act in *Business Wire*, a
14 widely-distributed, business-oriented news service (the "Derivatives Notice"). *See*
15 Seltzer Decl., Ex. B. The Derivatives Notice properly informed putative class
16 members of the pendency of this action, the specific legal claims asserted in the
17 complaint, the proposed class period and the 60-day deadline by which other class
18 members must move this Court to be appointed as lead plaintiff. *See* 15 U.S.C. §
19 78u-4(a)(3)(A)(i)(I) & (II). The instant motion is being filed on August 29, 2017,
20 which is within 60 days from the publication of the Derivatives Class Notice. *See*
21 15 U.S.C. § 78u-4(a)(3)(A)(i)(II).

22 Finally, Timber Hill has selected and retained competent counsel to represent
23 it and other members of the Derivatives Class. Specifically, Timber Hill has
24 selected Entwistle & Cappucci and Susman Godfrey, both experienced and well-
25 qualified firms, to co-lead this litigation, and both firms have agreed to a fee
26 structure that is designed to achieve the greatest possible recovery for the class.
27 The firm resumes of Entwistle & Cappucci and Susman Godfrey, Timber Hill's
28 choice of Co-Lead Counsel, are attached as Exhibit C and Exhibit D respectively, to

the Seltzer Declaration. Also included as part of Exhibit D is the firm biography of Marc M. Seltzer, who is lead of the firm's effort in this litigation. Accordingly, Timber Hill has satisfied the individual requirements of 15 U.S.C. § 78u-4(a)(3)(A)(i) and (a)(3)(B)(iii)(aa).

2. Timber Hill Believes It Has The Largest Financial Interest In The Relief Sought By The Class

The PSLRA instructs the Court to adopt a rebuttable presumption that the "most adequate plaintiff" for appointment as lead plaintiff is the entity or group of persons that has the largest financial interest in the relief sought by the class. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb). In order to do so, "the district court must compare the financial stakes of the various plaintiffs and determine which one has the most to gain from the lawsuit." *In re Cavanaugh*, 306 F.3d 726, 730 (9th Cir. 2002). In calculating a proposed lead plaintiff's financial stake in the litigation, the Ninth Circuit recommends that the district court "select accounting methods that are both rational and consistently applied." *Id.*, n. 4.²

During the Class Period, as evidenced by the accompanying certification (*See* Seltzer Decl., Ex. A), Timber Hill sold 4,894 Allergan call options, relating to underlying Allergan common stock valued at \$66,737,500. *Id.* Additionally, Timber Hill purchased 2,383 put options during the Class Period, and the aggregate value of the underlying Allergan common stock that Timber Hill had the right to sell under these put options totaled \$28,128,750. *Id.* The total aggregate value of Allergan common stock underlying Timber Hill's call option sales and put option

² In the context of comparing various movants' financial stakes based on common stock transactions, courts in this Circuit typically consider the Olsten-Lax factors. *See Knox v. Yingli Green Energy Holding Co., Ltd.*, 136 F. Supp. 3d 1159, 1163 (C.D. Cal. 2015) (citations and internal quotations omitted). However, at least one court in this Circuit has rejected Olsten-Lax in the context of determining a plaintiff's financial stake based on transactions in options. *See, e.g., Bricklayers of Western Pennsylvania Pension Plan v. Helca Min. Co.*, Nos. 2:12-cv-00042-BLW, 2:12-cv-00067-BLW, 2012 WL 2872787 (D. Idaho July 12, 2012).

1 purchases is \$94,866,250.³ *Id.* Timber Hill is presently unaware of any other
 2 Derivatives Class member who has sought to be appointed as lead plaintiff of the
 3 class. Accordingly, Timber Hill has the largest financial interest and is thus the
 4 presumptive “most adequate plaintiff.” 15 U.S.C. § 78u-4(a)(3)(B)(iii).

5 **3. Timber Hill Satisfies Fed. R. Civ. P. 23**

6 In addition to possessing the largest financial interest in the outcome of the
 7 litigation, the lead plaintiff must also “otherwise satisf[y] the requirements of Rule
 8 23 of the Federal Rules of Civil Procedure.” 15 U.S.C. § 78u-4(a)(3)(B). Rule
 9 23(a) provides that an action may be certified as a class action only if the following
 10 requirements are satisfied: (1) the class is so numerous that joinder of all members
 11 is impracticable; (2) there are questions of law or fact common to the class; (3) the
 12 claims or defenses of the representative parties are typical of the claims or defenses
 13 of the class and (4) the representative parties will fairly and adequately protect the
 14 interests of the class. *See* Fed. R. Civ. P. 23(a).

15 The party moving for lead plaintiff need only make a preliminary showing of
 16 the typicality and adequacy prongs of Rule 23(a) – those that directly address the
 17 personal characteristics of the class representative – and defer examination of the
 18 remaining requirements until the lead plaintiff moves for class certification. *See*
 19 *Cavanaugh*, 306 F.3d 726, 730-31 (9th Cir. 2002) (vacating order appointing lead
 20 plaintiff); *Schrivver v. Impac Mort. Holdings, Inc.*, No. SACV 06-31 CJC (RNBx),
 21 2006 WL 6886020, at *3 (C.D. Cal. May 2, 2006) (granting motion for
 22 consolidation of related cases, appointment of lead plaintiff, and appointment of
 23 class counsel); *Knox*, 136 F. Supp. 3d at 1165.

24 As set forth below, Timber Hill satisfies both the typicality and adequacy
 25 requirements of Rule 23.

26
 27
 28 ³ These calculations are solely for purposes of this motion, and are not necessarily intended to represent the amount of, or method of, calculation of damages plaintiff may present at trial.

1 proposed lead plaintiff has “a sufficient interest in the outcome of the case” and a
2 “willingness . . . to vigorously prosecute the action.” *Autobytel*, 226 F.R.D. at 667-
3 68. The Court also “assess[es] whether [the proposed lead plaintiff] has interests
4 antagonistic to the class, and whether his counsel have the necessary capabilities
5 and qualifications.” *Id.*

6 As evidenced by Timber Hill’s substantial losses resulting from its sales of
7 Allergan call options and purchase of Allergan put options during the Class Period,
8 its interests are clearly aligned with the interests of the members of the class it seeks
9 to represent. There is also no evidence of any antagonism between Timber Hill’s
10 interests and those of the other members of the class. As detailed above, Timber
11 Hill shares identical or substantially similar questions of law and fact with the other
12 members of the proposed class and its claims are typical of the members of the
13 class.

14 Timber Hill has also taken significant steps which demonstrate that it will
15 protect the interests of the class. Among other things, Timber Hill has: (i) filed the
16 only complaint on behalf of the Derivatives Class; (ii) met and conferred with
17 counsel for defendants in the present case as well as counsel for the plaintiffs and
18 defendants in *Basile*; (iii) filed a status report with the Court; (iv) attended the July
19 25, 2017 hearing before the Court; (v) met with the Special Masters in this action
20 and the *Basile* action; (vi) negotiated a scheduling order; (vii) negotiated a
21 protective order; (viii) moved for relief from the PSLRA discovery stay; (ix) further
22 negotiated discovery-related issues with defendants separately, and in response to
23 the Court’s and Special Masters’ directions; and (x) commenced document
24 discovery and review. Moreover, Timber Hill has retained competent and
25 experienced counsel to prosecute these claims and to investigate further the facts
26 giving rise to this action. Timber Hill’s proposed Co-Lead Counsel are highly
27 qualified, experienced in the prosecution of class actions involving federal
28 securities law claims, and able successfully to conduct this complex litigation in a

1 professional manner. Thus, Timber Hill satisfies the typicality and adequacy
2 requirements of Fed. R. Civ. P. 23 for the purposes of this motion.

3 **c. Timber Hill Is An Ideal Lead Plaintiff to Represent**
4 **the Derivatives Class**

5 As an institutional investor, Timber Hill also satisfies the PSLRA's goal of
6 encouraging institutional investors to "take the reins" in securities class actions.
7 See H.R. Conf. Rep. No. 104-369, at *34 (1995), reprinted in 1995 U.S.C.C.A.N.
8 730, 755 (1995) (explaining that "increasing the role of institutional investors in
9 class actions will ultimately benefit shareholders and assist courts by improving the
10 quality of representations in securities class actions."). Courts in this Circuit and
11 others have noted this Congressional preference to appoint institutional investors,
12 such as Timber Hill, as lead plaintiffs in federal securities class actions. See, e.g.,
13 *Pace v. Quintanilla*, No. SACV 14-2067-SOC (RNBx), 2014 WL 4180766, at *2
14 (C.D. Cal. Aug. 19, 2014) (Carter, J.) ("[C]ourts have found that small groups
15 whose members have suffered substantial losses . . . are suitable lead plaintiffs.").

16 Timber Hill is a sophisticated institutional investor with a substantial
17 financial stake in this litigation. Timber Hill will have every incentive to
18 vigorously pursue this case and to obtain the best possible recovery for the
19 Derivatives Class. Appointing Timber Hill as lead plaintiff of the Derivatives Class
20 would satisfy the PSLRA's aim of having the plaintiff class represented by an
21 institutional investor with a significant stake in the outcome of the litigation.

22 **IV. TIMBER HILL'S CHOICE OF LEAD COUNSEL SHOULD BE**
23 **APPROVED**

24 As the presumptive lead plaintiff, Timber Hill's selection of the law firms of
25 Entwistle & Cappucci and Susman Godfrey to serve as Co-Lead Counsel, pursuant
26 to 15 U.S.C. 78u-4(a)(3)(B)(v), should be approved by the Court.

27 As reflected in its firm resume, Entwistle & Cappucci possesses extensive
28 experience litigating securities class actions, having successfully prosecuted some

1 of the largest and highest-profile securities class actions in history (*See Seltzer*
2 Decl., Ex. C). Entwistle & Cappucci has distinguished itself as one of the nation's
3 premier complex litigation firms, and currently serves as Lead Counsel and/or as a
4 member of Plaintiffs' Executive Committee in many high-profile securities class
5 actions pending throughout the country.

6 In recent years, Entwistle & Cappucci has secured billions of dollars in
7 recoveries on behalf of defrauded public and private institutional investors,
8 including: *In re Royal Ahold, N.V. Secs & ERISA Litig.*, MDL-01539 (D. Md.)
9 (obtaining \$1.1 billion recovery for class of investors); and *In re BankAmerica*
10 *Securities Litigation*, No. 99-1264-CEJ (E.D. Mo.) (obtaining \$490 million
11 recovery for class of investors).

12 Since the firm's founding in 1980, Susman Godfrey has served as lead
13 counsel in hundreds of class actions and other complex commercial disputes in
14 courts throughout the country. Susman Godfrey's practice is dedicated exclusively
15 to litigating and trying lawsuits. The firm has represented clients in some of the
16 largest and most complex cases ever litigated, and has demonstrated that it has the
17 ability and resources to handle those cases effectively and efficiently.

18 Susman Godfrey's experience, track record of success and staying power are
19 reflected in its wide recognition as one of the nation's leading trial firms, including
20 by *The American Lawyer* in its first-ever "Litigation Boutique of the Year" award
21 and, more recently, by being named in 2014 to *National Law Journal's* "America's
22 Elite Trial Lawyers" list. The firm's lawyers are consistently recognized as "Super
23 Lawyers" and "Rising Stars" in the states where they practice. Susman Godfrey
24 currently has more than one hundred lawyers nationwide in its four offices, over
25 90% of whom served as federal judicial clerks.

26 Accordingly, the Court should approve Timber Hill's selection of Entwistle
27 & Cappucci and Susman Godfrey as Co-Lead Counsel for plaintiff and the
28 Derivatives Class in this case.

**V. THE COURT SHOULD ORDER CONSOLIDATION OF ALL
FUTURE RELATED DERIVATIVES ACTIONS**

Plaintiff respectfully requests that the Court order any subsequently filed action related to the claims asserted in the above-captioned action brought on behalf of Allergan derivatives investors be consolidated with the present action. Additionally, plaintiff further requests that every future pleading in the above-captioned action have the caption: *In re Allergan, Inc. Proxy Violation Derivatives Litigation*, Case No. 2:17-cv-04776 DOC (KESx).

VI. CONCLUSION

For the foregoing reasons, Timber Hill respectfully requests that the Court: (i) appoint Timber Hill as lead plaintiff for the Derivatives Class; and (ii) approve its selection of Entwistle & Cappucci and Susman Godfrey as Co-Lead Counsel for the lead plaintiff and the Derivatives Class; and (iii) order the consolidation of any subsequently filed, removed or transferred related actions on behalf of Allergan derivatives investors under the caption *In re Allergan, Inc. Proxy Violation Derivatives Litigation*, Case No. 2:17-cv-04776 DOC (KESx).

Dated: August 29, 2017

Respectfully submitted,

MARC M. SELTZER
STEVEN G. SKLAVER
SUSMAN GODFREY L.L.P.

EDGAR G. SARGENT (*Pro Hac Vice*)
esargent@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1201 Third Avenue, Suite 3800
Seattle, Washington 98101
Telephone (206) 516-3880
Facsimile (206) 516-3883

ANDREW J. ENTWISTLE
VINCENT R. CAPPUCCI
ARTHUR V. NEALON
ROBERT N. CAPPUCCI
ENTWISTLE & CAPPUCCI LLP

By: /s/ Marc M. Seltzer
Marc M. Seltzer

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Attorneys for Plaintiff Timber Hill LLC